

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

EPIC GAMES, INC.,  
*Plaintiff, Counter-defendant,*  
v.  
APPLE INC.,  
*Defendant, Counterclaimant.*

Case No. 4:20-cv-05640-YGR-TSH

**OBJECTIONS TO SPECIAL MASTER  
DETERMINATIONS ISSUED  
JANUARY 28, 2025 REGARDING  
APPLE’S RE-REVIEWED  
DOCUMENTS**

The Honorable Thomas S. Hixson  
San Francisco Courthouse  
Courtroom E - 15th Floor  
450 Golden Gate Avenue  
San Francisco, CA 94102

Dear Magistrate Judge Hixson,

Pursuant to Section 4 of the Joint Stipulation and Order Approving Privilege Re-Review Protocol (Dkt. 1092) (the “Protocol”), Epic respectfully submits the following Objections to certain of the Special Masters’ privilege determinations issued on January 28, 2025, regarding Apple’s production of re-reviewed documents.

Epic does not have access to the documents and is therefore unable to fully assess the bases on which Apple claims privilege. However, based on the information provided in Apple’s privilege logs for the documents and their families, Epic believes several of the documents for which Apple maintained privilege assertions that were sustained by the Special Masters are in fact not privileged. Epic respectfully requests that the Court review the following documents *in camera* and reject Apple’s privilege assertions pertaining to these documents, in whole or in part.

**Predominantly Non-Legal Emails**

Entry No. 1811 (PRIV-APL-EG\_00044612) is a document Apple seeks to withhold entirely. But the document is an email from Liz Pulchny, a non-lawyer Senior Program Manager, to seventeen recipients—lawyers and non-lawyers alike, including Carson Oliver, a non-lawyer Senior Director of Business Management. The subject line of the email indicates that the discussion centered on an “analytics question”. Given the large number of non-legal recipients and a subject line that does not appear to address primarily legal issues, this document likely should be produced (at most with redactions).

Entry No. 1844 (PRIV-APL-EG\_00045236) is a document Apple seeks to withhold entirely. It is an email from one non-lawyer to another non-lawyer regarding Apple's compliance plan in the European Union. No lawyer is listed as a recipient of the email (at least as to the top email). Therefore, this does not seem to be an e-mail that should be withheld, let alone in its entirety.

Entry No. 1929 (PRIV-APL-EG\_00045963) is another document Apple seeks to withhold entirely. It is an email chain from Phil Schiller, Apple Fellow and Senior Vice President, to several non-lawyers (including Mr. Kosmyinka, Apple's Director of App Review, and Mr. Sainz, an Apple communications employee), and one in-house counsel. Entry Nos. 1930 (PRIV-APL-EG\_00045970) and 1931 (PRIV-APL-EG\_00045971) are both images attached to the parent email. The subject line shows the document concerns an appeal to Apple of an apparent Apple decision to reject an application from the App Store during App Review—a purely, or at least primarily, business decision by Apple. As such, the e-mail and its attachments appear to be predominantly business-related, and should not be withheld (let alone in its entirety).

### **Business-Related Document**

Entry No. 1828 (PRIV-APL-EG\_00044907) is a document Apple seeks to withhold entirely. It appears to be a document discussing business-related topics such as “fast-growing apps”, “Commerce” and “Pricing”, as the file name indicates. Entry Nos. 1829 (PRIV-APL-EG\_00044911) and 1830 (PRIV-APL-EG\_00044912) appear to be images within the parent document. The custodian of the document and its attachment children is a non-lawyer. The document and its attachments therefore do not appear to be privileged documents that ought to be withheld, let alone in their entirety.

DATED: February 3, 2025

CRAVATH, SWAINE & MOORE LLP

By: /s/ Yonatan Even

*Counsel for Plaintiff Epic Games, Inc.*